

## STANDARD GENERAL TERMS AND CONDITIONS

### 1. DEFINITIONS.

- A. **Contracting Officer.** The person designated to act for the Department in the processing of this contract. The person so designated is the Deputy Secretary for Administration.
- B. **Project Officer.** The person designated to act for the Department in administering this contract.

### 2. CONTRACT CONSTRUCTION.

The provisions of this Agreement shall be construed in accordance with the provision of the Laws of the Commonwealth of Pennsylvania. All questions or disputes arising between the parties hereto respecting any matter pertaining to this Agreement or any part thereof or any breach of contract arising thereunder may be referred by the Contractor to the Board of Claims pursuant to sections 1721-1726 of the Commonwealth Procurement Code (62 Pa.C.S. §§1721-1726). This shall be the exclusive remedy for the Contractor to resolve such questions and disputes if the Contractor and the Department are unable to resolve them between themselves. Settlement of disputes under this provision must be prior to the final payment to Contractor.

### 3. INDEPENDENT CONTRACTOR.

The Contractor shall perform its services under this Agreement as an independent contractor and shall provide public liability, property damage and workers' compensation insurance, insuring as they may appear, the interests of all parties to the Agreement against any and all claims which may arise out of Contractor's operations under the terms of this Agreement. The Contractor shall accept full responsibility for the payment of premiums for workers' compensation and social security as well as all income tax deductions and any other taxes or payroll deductions required by law for its employees who are performing services specified by this Agreement.

### 4. DEPARTMENT HELD HARMLESS.

The Contractor agrees to indemnify, defend and save harmless the Commonwealth (including the Department), its officers, agents and employees: (a) from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, material men, laborers and any other persons, firms or corporations furnishing or supplying work, services, materials or supplies in connection with the performance of this Agreement; and (b) from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of this Agreement; and (c) against any liability, including costs and expenses, for violation of proprietary rights or right of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this Agreement or based on any libelous or other unlawful matter contained in such data.

### 5. ASSIGNABILITY.

- A. Subject to the terms and condition of this Paragraph 5, this Contract shall be binding upon the parties and their respective successors and assignors.
- B. The Contractor may not assign, in whole or in part, this Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.
- C. Notwithstanding the foregoing, the Contractor may, without the consent of the Contracting Officer, assign its rights to payment to be received under the Contract, provided that the Contractor provides written notice of such assignment to the Contracting Officer together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this Contract.
- D. For the purposes of this Contract, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Contractor provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
- E. Any assignment consented to by the Contracting Officer shall be evidenced by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all of the terms

and conditions of the Contract and to assume the duties, obligations, and responsibilities being assigned.

- F. A change of name by the Contractor, following which the Contractor's federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The Contractor shall give the Contracting Officer written notice of any such change of name.

**6. SUB-CONTRACTS.**

Except for those sub-contracts specifically authorized by this Agreement, Contractor shall not enter into sub-contracts for any of the work contemplated under this Agreement without obtaining prior written approval of the Department, which shall be attached to the original Agreement, and subject to such conditions and provisions as the Department may deem necessary. PROVIDED, however, that notwithstanding the foregoing, unless otherwise provided herein, such prior written approval shall not be required for the purchase by Contractor of articles, supplies, equipment and services which are both necessary for and merely incidental to the performance of the work required under this Agreement; and PROVIDED, further, however, no provision of this clause and no such approval by the Department of any sub-contract shall be deemed in any event in any manner to provide for the incurrence of any obligation of the Department in addition to the total agreed-upon price.

**7. OTHER CONTRACTORS.**

The Department may undertake or award other contracts for additional or related work, and the Contractor shall fully cooperate with other contractors and Department employees and carefully fit its work to such additional work. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Department employees.

This paragraph shall be included in the contracts of all contractors with whom this Contractor will be required to cooperate. The Department shall equitably enforce this paragraph as to all contractors to prevent the imposition of unreasonable burdens on any contractor.

**8. AVAILABILITY OF INFORMATION.**

During the period of this Agreement, all information obtained by the Contractor through work on the project shall be made available to the Department immediately upon demand.

**9. FISCAL AND PROGRAM RECORDS.**

- A. Contractor agrees to maintain program records required by the Department and agrees that a program and facilities review, including meetings with consumers, review of service records, review of service policy and procedural issuances, review of staffing ratios and job descriptions, and meetings with any staff directly or indirectly involved in the provision of services may be conducted at any reasonable time by State and Federal personnel and other persons duly authorized by the Department.
- B. Contractor agrees to maintain program statistical records required by the Department to produce program narrative and statistical data at times prescribed by, and on forms furnished by the Department.
- C. Contractor agrees to maintain books, records, documents, sub-contracts and other evidence pertaining to the costs and expenses of this Agreement (hereinafter referred to in this paragraph 9 as "the records"), to the extent and in such detail as will properly reflect all net costs, direct and indirect, of labor, materials, equipment, supplies and services and other costs and expenses of whatever nature for which reimbursement is claimed under the provisions of this contract. If Contractor is not a public body, Contractor agrees to maintain books, records, documents and other evidence in accordance with accounting procedures and practices which meet generally accepted accounting principles.
- D. If this Agreement provides funding for a clinic or program which receives income or funding other than directly through this Agreement (such as, but not limited to, third party reimbursement for patients), Contractor agrees that all parts of this paragraph 9 of these Standard General Terms and Conditions shall also apply to Contractor's records pertaining to such other sources of funding or income supporting the clinic or program.
- E. Contractor agrees to make available at the Office of the Contractor at all reasonable times during the term of this Agreement and the period set forth in Paragraph 10 below, any of the records for inspection, audit or reproduction by any authorized representative of the Department, the Department's Comptroller, the Auditor General, the Inspector General or Federal auditors.

- F. The provisions of this paragraph 9 shall be applicable to and included in each sub-contract entered into by the Contractor in the performance of this Agreement. The term "sub-contract" as used in this paragraph excludes purchase orders not exceeding \$1,000 and sub-contracts or purchase orders for public utility services at rates established for uniform applicability to the general public.
- G. Contractor agrees to collect statistical data of a fiscal nature on a regular basis and to make fiscal statistical reports at times prescribed by, and on forms furnished by the Department.

**10. RECORD RETENTION REQUIREMENTS.**

All records kept pursuant to Paragraph 9 shall be retained pursuant to the provisions of this Paragraph 10.

- A. The Contractor shall preserve and make available its records for a period of four years from the date of final payment under this Agreement, and for such period, if any, as is required by applicable statute, by any other paragraph of this Agreement, or by sub-paragraphs (1) or (2) below.
  - (1) If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five years from the date of any resulting final payment.
  - (2) Records which relate to litigation or the settlement of claims arising out of the performance of this Agreement, or costs and expenses of this Agreement as to which exception has been taken by the auditors, shall be retained by the Contractor until such litigation, claims, or exceptions have been disposed of.
- B. Except for the records described in sub-paragraph A (2) above, the Contractor may, in fulfillment of its obligation to retain its records as required by this paragraph, substitute photographs, microphotographs, or other authentic reproductions of such records, after the expiration of two years following the last day of the month of reimbursement to the Contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by the Department, with the concurrence of the auditors.

**11. EVALUATION COMPONENT.**

All work performed under this contract shall include an evaluation component. Contractor agrees to collect, maintain and provide data for evaluation purposes as specified in the Work Statement and in any other provisions of this Contract.

**12. FEDERAL FUNDS.**

The Contractor certifies that the Federal funds provided by this Agreement do not replace or supplant in any way any other funds, whether state, local or private, being used to provide already existing services. Contractor further certifies that the services to be provided under this Agreement are not already available without cost. Contractor further certifies that the addition of Federal funds will result in a commensurate program expansion.

**13. QUALITY ASSURANCE.**

Unless otherwise provided herein, the Contractor with due diligence shall furnish all necessary qualified personnel, material and equipment, managing and directing same to complete the work required by this Agreement. The Contractor's work hereunder shall be monitored by the Project Officer and the Project Officer's designated representatives. If requested by the Department, Contractor shall produce or provide special reports to the Department in a timeframe and format specified by the Department.

**14. PROGRAM CHANGES.**

The Project Officer may at any time, by written order, make changes in the statement of work, provided such changes are within the general scope of the statement of work and provided further that the total cost of this Agreement is not exceeded. The Project Officer and the Contractor shall mutually determine whether the ordered changes can be accomplished within the total contract cost and the extent of change, if any, in delivery schedules required by the ordered changes. Failure of the Project Officer and the Contractor to arrive at such mutual determinations shall be a dispute concerning a question of fact within the meaning of the paragraph 2 of this Appendix entitled "Contract Construction." The Project Officer may not change the scope of work or increase the total cost of this Agreement.

**15. WRITTEN COMMITMENT.**

Any written commitment or representation of the Contractor made within the scope of this Agreement shall, if accepted by the Project Officer in writing, be binding upon the Contractor and shall be incorporated as a part of this Agreement.

**16. KEY PERSONNEL.**

The personnel specified in this Agreement are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, the Contractor shall notify the Project Officer reasonably in advance and shall submit justification including proposed substitutions, in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by the Contractor without the written consent of the Project Officer.

**17. INSPECTION AND ACCEPTANCE.**

Final inspection and acceptance of all work required under this Agreement shall be performed by the Project Officer.

**18. TRAVEL AND SUBSISTENCE COSTS.**

The Department shall not be liable for travel or subsistence costs except as specifically set forth in this Agreement.

**19. DATA, COPYRIGHTS, AND DISCLOSURE.**

- A. Definition: The term "data," as used herein, includes but is not necessarily limited to written reports and analyses, diagrams, maps, system designs, computer programs, flow charts, punched card decks, magnetic tapes, diskettes, drawings, studies, manuals, brochures, advertisements, documents, sketches, papers, files, information, computer documentation, other tangible materials, and work of any similar nature which is required to be performed by or for the Contractor under this Contract or which is incidentally prepared by or for the Contractor in the performance of this Contract. Data includes background material prepared by or for the Contractor incidental to the performance of this Contract. Background material is defined as original work papers, notes, and drafts prepared by or for the Contractor to support conclusions in any final report or product delivered under this Contract, including but not limited to completed questionnaires, and material in electronic data processing form, computer programs, and other tangible materials produced by or for the Contractor during the term of this Contract and directly related to the services being rendered. It does not include Contractor's financial reports or other information incidental to Contract administration.
- B. Preexisting Materials Brought by Contractor to the Project: The Department shall have no ownership rights to Contractor's proprietary materials, data, software, methodologies or other intellectual property that Contractor brings to the Project or has previously developed with or obtained from third parties. Notwithstanding the foregoing provision, where materials brought by the Contractor to the Project are necessary to use the deliverables required under this Contract, the Contractor shall, and hereby effectively does, grant to the Department a paid-up, nonexclusive, nontransferable license to use, modify, prepare derivative works, and to grant to third parties engaged by the Commonwealth the right to use, modify, and prepare derivative works, from all or any portion of the material brought by the Contractor to the Project.
- C. Ownership of Data: Any Data that fits the definition of "work made for hire," as that term is defined in United States copyright law, shall be considered a "work made for hire." All rights to these Data shall vest in the Department, which shall have sole and exclusive ownership of all Data. In the event that such Data do not fall within the specifically enumerated works that constitute "works made for hire" under the United States copyright laws, Contractor agrees to assign and, upon their authorship or creation, expressly and automatically assigns all copyright interests, proprietary rights, trade secrets, and other right, title and interest in and to such Data to the Department. The Department shall have the rights accorded a holder of copyright under the United States copyright laws including, but not limited to, the exclusive right to reproduce the Data in copies, the right to distribute copies by sale or other transfers, the right to register all copyrights in its own name as author in the United States and foreign countries, the right to prepare derivative works based upon the Data, and the right to display the Data. Upon completion or termination of this Agreement, Contractor shall immediately deliver all working papers, files, background material, and other documentation to the Department. Contractor warrants that the Data are original and do not infringe the rights of any other work.
- D. Forms Approval: All forms, questionnaires, survey instruments, etc., developed under this Agreement shall be subject to prior written approval by the Department.

- E. Data Processing: All computer programs, tapes, and software developed under this Agreement, and any data or information provided to the Department by diskette or electronic means, shall be compatible with Department computer systems. Specifications, if not included elsewhere in this Agreement, may be obtained from the Project Officer.
- F. Federal Government Interests: It is understood that certain funding under this Agreement may be provided by the Federal Government. Accordingly, the rights to Data of Contractors or subcontractors hereunder will be further subject to government rights as set forth in 37 C.F.R. Section 401, and other applicable statutes. Notwithstanding the foregoing, the Department retains the right to share information with the Federal Government relating to Data developed under a wholly state-funded Contract.
- G. Defense of Infringement Claim: The Contractor shall hold the Commonwealth harmless for any suit or proceeding brought against the Commonwealth, including the Department, or their officials or employees, on account of any alleged infringement of any United States or foreign copyrights, patents, trademarks, or trade secrets arising out of the performance of this Agreement, including any suit or proceeding relating to all work, services, materials, reports, studies and computer programs provided by the Contractor. The Contractor shall pay all damages and costs awarded therein against the Commonwealth. Pursuant to the Commonwealth Attorney's Act 71 P.S. § 732 – 101, et seq., the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under the terms it deems appropriate, delegate its right of defense. If information and assistance are furnished by the Commonwealth at Contractor's written request, it shall be at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written request. If any of the data, materials, reports, studies or computer programs provided by the Contractor are held to constitute infringement, and the use of publication thereof is enjoined in such suit or proceeding, the Contractor shall, at its own expense and at its option, either procure the right to publish or continue use of such infringing data, materials, reports, studies or computer programs, replace them with non-infringing items, or so modify them so that they are no longer infringing. If after a reasonable time and good faith effort, the Contractor is unable to comply with the requirements of the immediately preceding sentence, the Contractor shall return to the Department that portion of contract funds expended by the Contractor in relation to the infringing item. The obligations of the Contractor under this paragraph continue without time limit.
- H. Department Approval and Attribution:
  - (1) All printed material is subject to written preapproval by the Department. "Printed material" includes, but is not limited to, notices, informational pamphlets, press releases, research reports, brochures, manuals, labels, newsletters, artwork, and print advertisements. All printed material must bear the Department logo and the names and titles of the Governor and the Secretary of Health unless otherwise authorized in writing by the Department's Contracting Officer. All material produced for radio and television must also be approved for quality of content and accreditation in writing by the Department's Contracting Officer prior to final production as well as after final production.
  - (2) Department attribution shall be at the Department's sole discretion. If the Department requires attribution on printed materials, the Contractor shall include the following statement on printed materials released by the Contractor: "This project is funded, in part, under a contract with the Pennsylvania Department of Health. Basic data for use in this study were supplied by the Pennsylvania Department of Health, Harrisburg, Pennsylvania. The Department takes no part in and is in no way responsible for any analyses, interpretations or conclusions," or another statement approved by the Department. If the Department requires attribution on materials produced for radio and television, the Contractor shall include a statement approved by the Department.

## **20. CONFIDENTIALITY, SENSITIVE DOCUMENTS AND INFORMATION.**

- A. The Contractor shall maintain the confidentiality of medical records of individuals served by the Contractor under this Agreement except to disclose such confidential information to the Department for purposes of consultation or the Department's monitoring of this Agreement.
- B. Sensitive Information: The Contractor shall not publish or otherwise disclose, except to the Department and except matters of public record, any information or data obtained hereunder from private individuals, organizations, or public agencies, in a publication whereby the information or data furnished by or about any particular person or establishment can be identified, except with the informed consent of such person or

establishment.

- C. The Contractor shall not release any sensitive documents or information without the prior written approval of the Department. The term "sensitive documents or information" shall mean a document or information that contains the description, design, operational plan, or other vital information about a critical facility or infrastructure located in Pennsylvania and bordering states (e.g., nuclear power plants, hazardous chemical plant, oil refinery, bridge, dam, tunnel, etc.), or contains information about the operational protocols or emergency response capabilities of state and local agency personnel, the content of which could be used by a terrorist or enemy of the United States to plan an attack upon a critical facility located in Pennsylvania and bordering states or engages in other activities that could cause death or injury to fire, police, medical, military, or other emergency response personnel, public officials, or the general public.

## **21. COLLECTION OR RECORDING OF INFORMATION.**

The Contractor shall submit to the Project Officer for written approval prior to use, copies of each questionnaire and survey plan, including plans for structured interviews and consultations, for the collection of information upon identical items from five or more individuals or organizational elements. The term "structured interview and consultation" is defined as an interview or consultation which follows a pre-designed line of questioning that takes approximately the same form for all the respondents being interviewed or consulted.

## **22. INTERESTS OF MEMBERS OF THE COMMONWEALTH AND OTHERS.**

No officer, member or employee of the Commonwealth and no member of its General Assembly, who exercises any functions or responsibilities under this Agreement, shall participate in any decision relating to this Agreement which affects that person's personal interest or the interest of any corporation, partnership, or association in which that person is, directly or indirectly, interested; nor shall any such officer, member or employee of the Commonwealth or member of its General Assembly have any interest, direct or indirect, in this Agreement or the proceeds thereof.

## **23. INTEREST OF CONTRACTOR.**

The Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants that in the performance of this Agreement, it shall not knowingly employ any person having such interest. Contractor further certifies that no member of the board of the Contractor or any of its officers or directors have such an adverse interest.

## **24. DEFAULT AND TERMINATION.**

- A. The Department may, subject to the provisions of sub-paragraph C below, by written notice of default to the Contractor, immediately terminate upon such terms as said notice shall set forth, the whole or any part of this Agreement in any one of the following circumstances:

- (1) If the Contractor fails to perform the services within the time specified herein or any extension thereof; or
- (2) If the Contractor fails to perform any of the other provisions of this Agreement, or so fails to make progress as to endanger its terms, and in either of these two circumstances does not cure such failure within a period of ten days (or such longer period as the Department may authorize in writing) after receipt of notice from the Department specifying such failure.

- B. In the event the Department terminates this Agreement in whole or in part as provided in sub-paragraph A above, the Department may procure, upon such terms and in such manner as the Project Officer may deem appropriate, services similar to those so terminated and the Contractor shall be liable to the Department for any excess costs for such similar services, provided that the Contractor shall continue the performance of this Agreement to the extent not terminated under the provisions of this paragraph 25.

- C. Except with respect to defaults of sub-contractors, the Contractor shall not be liable for any excess costs if the failure to perform this Agreement arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth of Pennsylvania in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restriction, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a sub-contractor, and if such default arises out of causes beyond the control of both the Contractor

and sub-contractor and without the fault or negligence of either of them, the Contractor shall not be liable unless the services to be furnished by the sub-contractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

- D. If this Agreement is terminated as provided in sub-paragraph A above, the Department shall require the Contractor to transfer title and deliver to the Department such partially completed reports or other documentation as the Contractor has produced under this Agreement. Payments for completed reports and other documentation delivered to and accepted by the Department shall be at the Agreement price. Payment for partially completed reports and other documentation delivered to and accepted by the Department shall be in an amount agreed upon by the Contractor and the Project Officer. Failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of Paragraph 2 of this Appendix entitled "Contract Construction." The Department may withhold from amounts otherwise due the Contractor for such completed or partially completed reports or other documentation such sum as the Department determines to be necessary to protect it against loss because of outstanding liens or claims of former lien holders.
- E. The rights and remedies of the Department provided in this paragraph 25 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.
- F. The Department may cancel this Agreement, in whole or in part, at any time for the convenience of the Commonwealth by giving written notice to the Contractor. Should the Department exercise its rights under this clause, the Department will pay the Contractor for all work done by the Contractor under this Agreement until such time as the Department sets forth in its written notice to Contractor.
- G. Should the Contractor become insolvent, or if proceedings in bankruptcy shall be instituted by or against the Contractor, the remaining or unexpired portion of this Agreement may, at the election of the Department, be terminated.
- H. In addition, this Agreement may be cancelled by either party upon 30 days advance written notice.

**25. CONTRACT CONTINGENT UPON LEGISLATIVE APPROPRIATION.**

Payment hereunder is subject to the availability of State and/or Federal funds.

**26. AVAILABILITY OR SUFFICIENCY OF DEPARTMENT FUNDS.**

In addition to any other termination provision within this Contract, the Department may terminate this Agreement at any time in the event funds, including, but not limited to, federal program funds, become unavailable or are insufficient for Department program purposes. In such case, the Department will provide the Contractor with advance notice to the extent reasonable and possible under the circumstances to either terminate the contract overall, or suspend all or a portion of such contract as determined by the Department and set forth in its notice to Contractor. The Department will pay Contractor for satisfactory work completed up until such termination or outside such suspension period, but in no event shall Contractor be entitled to receive loss of profits.

**27. COVENANT AGAINST CONTINGENT FEES.**

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for commission, percentage, brokerage or contingent fee (excepting bona fide employees or bona fide established commercial selling agencies maintained by the Contractor for the purpose of securing business). For breach or violation of this warranty, the Commonwealth shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the consideration otherwise due under this Agreement, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

**28. ENVIRONMENTAL PROTECTION.**

In carrying out this Agreement, the Contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations.

**29. EQUAL EMPLOYMENT OPPORTUNITY.**

- A. Contractor shall not discriminate against any employee, applicant for employment, independent contractor or any other person because of race, color, religious creed, ancestry, national origin, age, or sex. Contractor shall take affirmative action to insure that applicants are employed, and that employees or agents are treated during

employment, without regard to their race, color, religious creed, ancestry, national origin, age, or sex. Such affirmative action shall include, but is not limited to: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. Contractor shall post in conspicuous places, available to employees, agents, applicants for employment, and other persons, a notice to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

- B. Contractor shall, in advertisements or requests for employment placed by it or on its behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, age, or sex.
- C. Contractor shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by Contractor.
- D. It shall be no defense to a finding of noncompliance with this nondiscrimination clause that Contractor had delegated some of its employment practices to any union, training program, or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the Contractor was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanction.
- E. Where the practices of a union or training program or other source of recruitment will result in the exclusion of minority group persons, so that Contractor will be unable to meet its obligations under this nondiscrimination clause, Contractor shall then employ and fill vacancies through other nondiscriminatory employment procedures.
- F. Contractor shall comply with all State and Federal laws prohibiting discrimination in hiring or employment opportunities. In the event of Contractor's noncompliance with the nondiscrimination clause of this Agreement or with any such laws, this Agreement may be terminated or suspended, in whole or in part, and Contractor may be declared temporarily ineligible for further Commonwealth contracts, and other sanctions may be imposed and remedies invoked.
- G. Contractor shall furnish all necessary employment documents and records to, and permit access to its books, records, and accounts by, the Department and the Office of Administration, Bureau of Affirmative Action, for purposes of investigation to ascertain compliance with the provisions of this clause. If Contractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the Department or the Bureau of Affirmative Action.
- H. Contractor shall actively recruit minority sub-contractors or sub-contractors with substantial minority representation among their employees.
- I. Contractor shall include the provisions of this nondiscrimination clause in every sub-contract, so that such provisions will be binding upon each sub-contractor.
- J. Contractor obligations under this clause are limited to the Contractor's facilities within Pennsylvania, or where the contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

**30. EQUAL OPPORTUNITY FOR THE HANDICAPPED.**

- A. The Contractor agrees to abide by Section 504 of the Rehabilitation Act of 1973, as amended (Public Law 93-112, 29 U.S.C. §794, as amended) and implementing Federal regulations. The Contractor assures that any benefits, services, or employment, available through the Contractor to the public by way of this Agreement's funds, shall not be denied persons with handicaps who are otherwise qualified or eligible for the benefits, services, or employment available as a result of this Agreement.
- B. The Contractor shall include the provisions of sub-paragraph A above in every sub-contract under this Agreement so that such provision binds each sub-contractor.

**31. PROVISIONS CONCERNING THE AMERICANS WITH DISABILITIES ACT.**

During the term of this Agreement, the Contractor agrees as follows:

- A. Pursuant to federal regulations promulgated under the authority of the Americans With Disabilities Act, 28 C.F.R. §35.101 et seq., the Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Agreement or from activities provided for under this Agreement. As a condition of accepting and executing this Agreement, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. §35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.
- B. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor's failure to comply with the provisions of sub-paragraph A above.
- C. The Contractor shall include the provisions of sub-paragraph A above in every sub-contract under this Agreement so that such provision binds each sub-contractor.

**32. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE.**

During the term of the Contract, the Contractor agrees as follows:

- A. The Contractor and any subcontractors shall comply with any federal, state, or local law, as applicable, pertaining to nondiscrimination and equal opportunity in regard to its employees, applicants for employment, independent contractors, or any other person.
- B. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Contract or any subcontract, the Contractor, subcontractor or any person acting on behalf of the Contractor or subcontractor shall not by reason of gender, race, creed, color, religion, age, sexual preference, handicap or national origin discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- C. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under the Contract on account of gender, race, creed, color, religion, age, sexual preference, handicap or national origin.
- D. The Contractor shall not discriminate by reason of gender, race, creed, color, religion, age, sexual preference, handicap or national origin against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
- E. The Contractor and any subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
- F. The Contractor and any subcontractors ensure that any services or benefits available to the public or other third parties by way of this Contract shall not be denied or restricted for such persons due to race, creed, color, religion, sex, sexual preference, age, handicap, or national origin (national origin protections include persons who are limited English proficient) consistent with the provisions of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act and The Age Discrimination Act of 1975 as well as applicable provisions of the Omnibus Reconciliation Act of 1981.
- G. The Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the contracting officer and the Department of General Services' Bureau of Contract Administration and Business Development for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If the Contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting officer or the Bureau of Contract Administration and Business Development.
- H. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.
- I. The Commonwealth may cancel or terminate the Contract, and all money due or to become due under the Contract

may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

### **33. DISPOSITION OF EQUIPMENT AND OTHER MATERIAL.**

- A. Contractor agrees to obtain all supplies and equipment for use in the performance of this Agreement at the lowest practicable cost and to purchase by means of a system of competitive bidding.
- B. Title to all property furnished by the Department shall remain with the Department. Title to all personal property acquired by the Contractor, including purchase by lease-purchase agreement, for the cost of which the Contractor is to be reimbursed under this Agreement, shall vest in the Contractor during the term of this Agreement. Upon cancellation or termination of this Agreement, such purchased personal property which has remaining useful life shall become the property of the Department, or at the election of and with written approval of the Department, may be disposed of by the Contractor in accordance with the following provisions:
  - (1) If the Contractor wishes to retain any items of such purchased property, both parties will arrange for an independent third-party appraisal of these property items and the Contractor will reimburse the Department for the value of the remaining useful life of the property on the basis of such appraisal. Unless otherwise agreed upon in writing by the Department, the Contractor shall be responsible for the cost of appraisal.
  - (2) Provided the Department is notified ten days in advance of the date of the sale and the Contractor has the prior written permission of the Department and the approval of the Governor's Office of Budget, Contractor may sell the property. Contractor shall reimburse the Department for the Department's appropriate share.
- C. All property furnished by the Department or personal property acquired by the Contractor, including purchase by lease-purchase agreement, for which the Contractor is to be reimbursed under this Agreement shall be deemed Commonwealth property for the purpose of sub-paragraphs D, E, and F of this paragraph.
- D. Contractor shall maintain and administer in accordance with sound business practices a program for the maintenance, repair, protection, preservation and insurance of Commonwealth property so as to assure its full availability and usefulness.
- E. The Commonwealth property and any property purchased under this Agreement shall, unless otherwise provided herein, or approved in writing by the Department and the Governor's Office of Budget, be used only for the performance of this Agreement.
- F. In the event that Contractor is indemnified, reimbursed or otherwise compensated for any loss or destruction of or damage to the Commonwealth's property, Contractor shall use the proceeds to repair, renovate or replace the Commonwealth property involved, or shall credit such proceeds against the cost of the work covered by the Agreement, or shall otherwise reimburse the Department as directed by the Department.
- G. Should the Contractor purchase equipment pursuant to this Agreement, the Contractor shall complete the Department's Equipment Inventory Form and return it to the Department with the Contractor's invoice which seeks reimbursement for such equipment under this Agreement. The Department will provide the Contractor with the form when this Agreement provides for the purchase of equipment.

### **34. GENERIC DRUGS.**

If under this Agreement the Contractor prescribes or dispenses drugs to consumers, it shall do so in accordance with Act 259 of November 24, 1976, P.L. 1163, 35 P.S. §960.1 et seq., as amended, and prescribe and dispense generically equivalent drugs rather than brand name drugs whenever possible.

### **35. EXTENSION RIGHT.**

The Commonwealth reserves the right, upon written notice issued by the Contracting Officer to the Contractor, to extend the term of the Agreement for up to three (3) months upon the same terms and conditions only to prevent a lapse in Agreement coverage and only for the time necessary, up to three (3) months, to enter into a new Agreement.

### **36. CONTRACTOR INTEGRITY PROVISIONS.**

- A. For purposes of this paragraph only, the words "confidential information," "consent," "contractor," "financial

interest,” and “gratuity” shall have the following definitions.

- (1) **Confidential information** means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth.
  - (2) **Consent** means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this Agreement.
  - (3) **Contractor** means the individual or entity that has entered into this Agreement with the Commonwealth, including directors, officers, partners, managers, key employees, and owners of more than a five percent interest.
  - (4) **Financial Interest** means:
    - (a) Ownership of more than a five percent interest in any business; or
    - (b) Holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
  - (5) **Gratuity** means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.
- B. The Contractor shall maintain the highest standards of integrity in the performance of this Agreement and shall take no action in violation of State or Federal laws, regulations, or other requirements that govern contracting with the Commonwealth.
- C. The Contractor shall not disclose to others any confidential information gained by virtue of this Agreement.
- D. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employe of the Commonwealth.
- E. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly, or indirectly, offer, give, or agree to promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employe of the Commonwealth.
- F. Except with the consent of the Commonwealth, neither the Contractor nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this Agreement except as provided therein.
- G. Except with the consent of the Commonwealth, the Contractor shall not have a financial interest in any other contractor, sub-contractor, or supplier providing services, labor, or material on this project.
- H. The Contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.
- I. The Contractor, by execution of this Agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that he or she has not violated any of these provisions.
- J. The Contractor, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the Contractor's integrity or responsibility, as those terms are defined by the Commonwealth's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents or files of any type or form which refer to or concern this Agreement. Such information shall be retained by the Contractor for a period of three years beyond the termination of the Agreement unless otherwise provided by law.

- K. For violation of any of the above provisions, the Commonwealth may terminate this and any other agreement with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another contractor to complete performance hereunder, and debar and suspend the Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

**37. CONTRACTOR RESPONSIBILITY PROVISIONS.**

- A. The Contractor must certify, in writing, for itself and all its subcontractors, that as of the date of its execution of any Commonwealth Agreement, that neither the Contractor, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with the bid/proposal, a written explanation of why such certification cannot be made.
- B. The Contractor must also certify, in writing, that as of the date of its execution of any Commonwealth Agreement it has no tax liabilities or other Commonwealth obligations.
- C. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Agreement through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the contracting agency if, at any time during the term of the Agreement, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
- D. The failure of the Contractor to notify the contracting agency of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Agreement with the Commonwealth.
- E. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth, which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- F. The Contractor may obtain a current list of suspended and debarred Commonwealth Contractors by either searching the Internet at [www.dgs.state.pa.us/dgs/cwp/view.asp?a=3&Q=115573&dgsNav=|5053|](http://www.dgs.state.pa.us/dgs/cwp/view.asp?a=3&Q=115573&dgsNav=|5053|) or contacting the:

Department of General Services  
Office of Chief Counsel  
603 North Office Building  
Harrisburg, PA 17125  
Telephone No: (717) 783-6472  
FAX No: (717) 787-9138

**38. CONTRACTOR OFFSET PROVISION.**

The Contractor agrees that the Commonwealth may set off the amount of any state tax liability or other debt of the Contractor or its subsidiaries that is owed to the Commonwealth and not being contested on appeal against any payments due the Contractor under this or any other agreement with the Commonwealth.

**39. ASSIGNMENT OF ANTITRUST CLAIMS.**

Contractor and the Commonwealth recognize that in actual economic practice, overcharges by Contractor's suppliers resulting from violations of state and federal antitrust laws are in fact borne by the Commonwealth. As part of the consideration for the award of this Agreement, and intending to be legally bound, Contractor assigns to the Commonwealth all right, title and interest in and to any claims Contractor now has or may hereafter acquire under State or Federal antitrust laws relating to the goods or services which are the subject of this Agreement.

**40. LAWS AND REGULATIONS.**

This Agreement is subject to the provisions of all pertinent Federal, State, and local laws and regulations and all amendments made thereto. Definitions of service, eligibility of recipients of service, and other limitations on the purchase of the services established in this Agreement are subject to modification by amendments to Federal, State and local laws and regulations without further notice to the Contractor.

**41. CORPORATE PRACTICE OF MEDICINE DOCTRINE.**

The Contractor shall comply with and not violate the corporate practice of medicine doctrine.

**42. HUMAN RESEARCH**

The Contractor agrees that all human subject research (which includes but is not limited to the researcher obtaining identifiable private information or data through intervention or interaction with an individual) shall be prohibited unless the Contractor also certifies that prior written approval of its own or another Institutional Review Board (IRB) has been obtained or the research has been exempted, subject to all applicable laws, including but not limited to: 42 U.S. C. Section 3515(b) (relating to prohibitions on funding certain experiments involving human participants) and the regulations there under. Voluntary, informed consent of each subject shall be obtained. If the subject is a minor, or incompetent, the voluntary, informed consent of his or her legal guardian shall be required. The Contractor shall inform each potential subject prior to his or her consent that refusal will not result in the loss of any benefits to which the subject is otherwise entitled from the federal government, the Commonwealth, the Contractor, any subcontractor, or any third party insurer. Additionally, the Contractor agrees that all human subject research funded under this grant shall be submitted for review and approval to the Department of Health IRB on form number HD 1013F prior to the onset of research.

**43. INTEGRATION CLAUSE.**

The parties agree that this Agreement constitutes the entire contract.